



[7590-01-P]

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 2**

**[NRC–2013–0050]**

**RIN 3150–AJ24**

### **Potential Changes to Interlocutory Appeals Process for Adjudicatory Decisions**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPR) that presented possible changes to its interlocutory appeals process for certain adjudicatory decisions. The NRC published the ANPR on April 5, 2013, and solicited public comments. Based upon the limited public comments received, the NRC does not believe that amendments to the current regulations are warranted at this time.

**DATES:** The ANPR to make changes to the NRC’s interlocutory appeals process for certain adjudicatory decisions that was published on April 5, 2013 (78 FR 20498), is withdrawn on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please refer to Docket ID **NRC–2013–0050** when contacting the NRC about the availability of information for this final rule. You may access publicly-available information related to this final rule by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC–2013–0050**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):**  
You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search.](#)” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Tison Campbell, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301-415-8579; e-mail: *Tison.Campbell@nrc.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background.**

On April 5, 2013 (78 FR 20498), the NRC published an ANPR soliciting public comment on proposed changes to its process for interlocutory review of rulings on requests for hearings

or petitions to intervene under § 2.311 of Title 10 of the *Code of Federal Regulations* (10 CFR).

The NRC presented four options for amending the 10 CFR 2.311 interlocutory review provision:

1) Retaining the current rule without any change (status quo), which permits interlocutory appeals, without any threshold requirements, of rulings on requests for hearings or petitions to intervene regarding only whether the hearing or intervention should be granted or denied in its entirety.

2) Increasing the scope of 10 CFR 2.311 beyond just whether the hearing or intervention should be granted or denied in its entirety to encompass the interlocutory review of each individual contention admissibility determination. All appeals would have to be made immediately following the issuance of the ruling by the presiding officer.

3) Increasing the scope of 10 CFR 2.311 to encompass the interlocutory review of each individual contention admissibility determination, except for the admission or denial of contentions grounded in the National Environmental Policy Act of 1969, as amended (NEPA). For decisions on environmental contentions partially admitting or partially denying a request or petition, the appeal of which would only be entertained either a) after the issuance of a final Environmental Impact Statement (or other NEPA document) or, alternatively, b) after a final decision in the proceeding (noninterlocutory).

4) Reducing the scope of 10 CFR 2.311 to include only interlocutory review of whether a request for hearing or petition to intervene was properly denied in its entirety. Orders granting a hearing, but only admitting some contentions would not be immediately appealable by any party.

In addition to presenting these options, the NRC sought comment on clarifying the interlocutory review process.

## **II. Public Comment on the Potential Changes to 10 CFR 2.311.**

The NRC received a single response during the public comment period, from the Nuclear Energy Institute (NEI). NEI suggested that the rulemaking be deferred, suspended, or withdrawn because it will not clearly improve safety or efficiency, and therefore should not be an agency priority. In its comments, NEI indicated that there is little information available to help predict the advantages and disadvantages of each potential option described in the ANPR. Because of this, NEI supported Option 1—to not take any action at this time. NEI noted that if the NRC were to proceed with a rulemaking, Option 2 may result in some increased efficiency. NEI did not support Options 3 or 4, and stated that Option 4 would be an inequitable standard.

### **III.**

### **Reasons for Withdrawing the ANPR.**

The sole public response to the ANPR argued that the NRC should preserve its existing interlocutory appeals standards. No public comments were received in favor of modifying the rule. Accordingly, the NRC believes that there is not significant public interest in a rule change at this time. The NRC also received no public comments suggesting that the current interlocutory appeals process is inefficient, prejudicial, or otherwise deficient. For these reasons, the NRC is withdrawing the ANPR.

Dated at Rockville, Maryland, this 25th day of October, 2013.

For the Nuclear Regulatory Commission.

Margaret M. Doane, General Counsel,  
Office of the General Counsel.

[FR Doc. 2013-26582 Filed 11/05/2013 at 8:45 am; Publication Date: 11/06/2013]